No. 131480

IN THE SUPREME COURT OF ILLINOIS

TONY MCCOMBIE, in her official capacity as Minority Leader of the Illinois House of Representatives and individually as a registered voter; THOMAS J. BROWN, individually as a registered voter; and SERGIO CASILLAS VAZQUEZ, individually as a registered voter; JOHN COUNTRYMAN, individually as a registered voter; and ASHLEY HUNSAKER, individually as a registered voter, Plaintiffs, v. ILLINOIS STATE BOARD OF ELECTIONS and JENNIFER M. BALLARD CROFT, CRISTINA D. CRAY, LAURA K. DONAHUE, TONYA L. GENOVESE, CATHERINE S. MCCRORY, RICK S. TERVEN, SR., CASANDRA B. WATSON, and JACK VRETT, all named in their official capacities as members of the State Board of Elections, Defendants.	Original Action under Article IV, Section 3 of the Illinois Constitution

REPLY BRIEF OF PLAINTIFFS REGARDING TIMELINESS OF MOTION FOR LEAVE TO FILE COMPLAINT

E-FILED
3/21/2025 7:14 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

CHARLES E. HARRIS, II (6280169)
MITCHELL D. HOLZRICHTER (6296755)
HEATHER A. WEINER (6317169)
JOSEPH D. BLACKHURST (6335588)
PRESTON R. MICHELSON (6342297)
MAYER BROWN LLP
71 South Wacker Dr.
Chicago, IL 60606
(312) 782-0600 (telephone)
(312) 706-9364 (facsimile)
charris@mayerbrown.com
mholzrichter@mayerbrown.com
hweiner@mayerbrown.com
jblackhurst@mayerbrown.com
pmichelson@mayerbrown.com

JOHN G. FOGARTY JR. (6257898)
THE LAW OFFICE OF JOHN FOGARTY JR.
4043 North Ravenswood Ave.
Suite 226
Chicago, IL 60613
(773) 549-2647 (telephone)
johnf@fogartylawoffice.com

Counsel for Plaintiffs

ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

INTRODUCTION

Plaintiffs have challenged Illinois's gerrymandered legislative map, which unconstitutionally dilutes the power of certain voters at the ballot box. On this Court's request, Plaintiffs provided several reasons in its opening brief why this case is "timely." For one thing, the action was filed less than two months after the unconstitutional map was enforced most recently—far sooner than the five years allowed by the applicable statute of limitations. And even if that were not the case, Leader McCombie's claims must be timely under a long-established doctrine that precludes time restrictions from running against government entities seeking to vindicate public rights. Finally, regardless of any time limit, Plaintiffs filed this case as fast as possible, given that similar cases broadly require or at least recommend showing evidence of the *effect* of the gerrymandered map through *multiple* election cycles.

Defendants—the Board of Elections and its members—have declined to assert any affirmative defense of timeliness and have taken "no position" on the matter. In their stead, the lawmakers behind the gerrymandered map seek to intervene and convince this Court that Plaintiffs' claims—despite being filed diligently and well within the statute of limitations—should be barred by the equitable doctrine of *laches*. They are wrong several times over.

To start, *laches* is generally inapplicable when a statute of limitations sets the standard. Intervenors make an unsupported argument that constitutional claims cannot be subject to a statute of limitations. But this

Court's caselaw forecloses such a contention. In any event, even if *laches* is available, it is triggered only when the party asserting it brings forward evidence that the plaintiff unreasonably delayed in a way that prejudices others. Intervenors, however, bring forward no evidence on these factors and, in any event, fail to show that there was any unreasonable delay or legitimate prejudice.

In their attempt to show there was a delay, Intervenors operate under the faulty assumption that Plaintiffs could have filed this case long ago. Instead, relevant precedent suggests that Plaintiffs wait to file suit until they have the requisite evidence of the partisan effects of the gerrymandered map. This showing, a US Supreme Court plurality has held, is likely insufficient until multiple election cycles have occurred. Intervenors also overlook the principle that claims based on unconstitutional maps accrue every time an election is held—not only when the map was first signed into law.

The supposed forms of prejudice that Intervenors identify fare no better. They suggest that census data is too "stale" to redistrict now—but bring no evidence to rebut the presumed accuracy of census data and overlook that this Court has myriad remedies available to deal with an unconstitutional map. Intervenors also submit that certain sitting Senators will be unseated by a new map—but no principle of law requires this and a remedial process can address this concern in any event. They also contend that redrawing the map would cause members to move away from voters who have come to know them—but

this argument has been soundly rejected before as "plainly insufficient" in the context of *laches*. Finally, Intervenors fear that a ruling in Plaintiffs' favor will lead to other unconstitutional maps being challenged—but this is an unalloyed good, not a form of prejudice.

Intervenors' brief is also notable for the things it does not recognize. For one thing, they decline to recognize Plaintiffs' arguments that, at a minimum, Leader McCombie's claims are timely under the doctrine of *nullum tempus ocurrit regi*, thus forfeiting any argument to the contrary. Intervenors also fail to recognize the prejudice that would befall Illinois citizens if an admittedly gerrymandered map was immunized from judicial scrutiny. And, finally, they do not recognize that, if their arguments in favor of *laches* are accepted, "all challenges to the constitutionality of reapportionment plans would necessarily be dismissed as untimely or inexcusably delayed." *Knox v. Milwaukee Cnty. Bd. of Election Comm'rs,* 607 F. Supp. 1112, 1116–18 (E.D. Wis. 1985). Perhaps that is an outcome they would like, but it is not one that this Court should be prepared to accept.

For the reasons explained in this reply and in Plaintiffs' opening brief, this Court should find that this case is timely and hear it on the merits.

ARGUMENT

Plaintiffs showed in their opening brief that their claim was timely under the applicable five-year statute of limitations. Nothing in Intervenors' arguments undermines this point. Instead, they suggest that Plaintiffs' claims should instead be barred by laches—a doctrine that normally plays no role when there is a statute of limitations. That mismatch aside, Intervenors also fail to establish the prerequisites for laches to apply. This Court should reject Intervenors' arguments and hold that this case is timely.

I. Intervenors have forfeited any argument that Leader McCombie's claims are untimely.

Plaintiffs argued (at 18–20) that the doctrine of *nullum tempus occurrit regi* precludes Leader McCombie's claims from being time-barred. But Intervenors offered no argument in response. Because "[p]oints not argued are forfeited," ILL. SUP. CT. R. 341(h)(7); *Nyhammer v. Basta*, 2022 IL 128354, ¶ 66, the doctrine of *nullum tempus* must apply. This conclusion means that both *laches* and the statute of limitations have no application to Leader McCombie's claims. *Vill. of Hartford v. First Nat'l Bank of Wood River*, 307 Ill. App. 447, 453 (1940) ("[T]he doctrine of laches does not apply against a unit of government …."); *City of Shelbyville v. Shelbyville Restorium, Inc.*, 96 Ill. 2d 457, 463–64 (1983) (holding that *nullum tempus* bars application of a statute of limitations). Thus, regardless of the merits of Intervenors' other arguments, Leader McCombie's claims must proceed.

II. A five-year statute of limitations governs Plaintiffs' claims.

Plaintiffs showed (at 13–14) that the five-year "catchall" statute of limitations governs their claims. *See* 735 ILCS 5/13-205. Intervenors offer only one substantive argument in response: that statutes of limitations cannot apply to redistricting claims, because that would purportedly violate the separation of powers. Resp. Br. at 6–7. Not so.

Intervenors cited no precedent for their argument, likely because it flouts decades of this Court's caselaw. Since at least 1949, this Court has rejected the argument that it violates the separation of powers for a statute of limitations to govern claims that arise under a constitutional provision. *Horn v. City of Chicago*, 403 Ill. 549, 560 (1949) ("The legislature may, without violating constitutional guaranties, enact statutes which limit the time within which actions may be brought" to enforce "right[s] created by a State constitution."). This principle was reiterated recently. *See Noland v. Mendoza*, 2022 IL 127239, ¶ 41 ("[C]ourts have found that a constitutional claim can become time-barred, just as any other claim."). That is why the Appellate Court has held that a claim that is "based upon … a constitutional challenge" is subject to the "catchall" five-year statute of limitations. *See Raintree Homes, Inc. v. Vill. of Kildeer,* 302 Ill. App. 3d 304, 307–08 (1999). So it is here, too.

Intervenors' reliance on Justice Thomas's dissent in *Cross v. Illinois State Board of Elections,* No. 113840, for a contrary conclusion is unavailing. Resp. Br. at 6 (citing A2–3). In his dissent, Justice Thomas merely made the observation that the relevant constitutional provision "contains no limitations

period." A2 (citing ILL. CONST. art. IV, § 3). Intervenors suggest that this observation means that redistricting claims have no limitations period, but that argument ignores that the "catchall" statute of limitations supplies one. *Raintree Homes*, 302 Ill. App. 3d at 307–08. And, in any event, Intervenors' cherry-picking of a purportedly favorable part of Justice Thomas's dissent is disingenuous, considering Justice Thomas *would have found that the redistricting case was timely*. *See* A2–3. Intervenors cannot cite the part of the dissent they think are good for them and ignore the parts they don't like.[1]

In sum, Intervenors have failed to meaningfully dispute Plaintiffs' argument that the five-year "catchall" statute of limitations governs this case.

III. No "special circumstances" warrant the application of *laches* to Plaintiffs' timely claims.

Plaintiffs showed (at 14–18) that this case was filed within five years of their claims accruing. Intervenors do not dispute this, but instead suggest that the doctrine of *laches* makes Plaintiffs' case untimely. Resp. Br. at 8–21. But, because Plaintiffs filed their case within the applicable statute of limitations, the defense of *laches* is "normally not available." *Bd. of Library Trs. of Vill. of Midlothian v. Bd. of Library Trs. of Posen Pub. Library Dist.*, 2015 IL App (1st) 130672, ¶ 43. To avail themselves of the protections of *laches* in this context,

[1] Nor should this Court be persuaded by the decision that was made by the majority regarding timeliness in *Cross*. The plaintiffs in *Cross* filed their challenge on February 8, 2012—about a month away from an impending primary election. Here, in comparison, Plaintiffs filed suit months before candidate petitions are circulated and more than a year before the primaries are held. Additionally, the plaintiffs in *Cross* did not make many of the arguments Plaintiffs advance here. For example, they did not invoke the *nullum tempus* doctrine, the "continuing violation" rule, or the relevant precedent that recommends that gerrymandering plaintiffs wait multiple election cycles before bringing suit.

Intervenors thus must make a heightened showing that there are some "special circumstances" beyond what is normally required to trigger *laches*. *In re Marriage of Smith*, 347 Ill. App. 3d 395, 401–02 (2004). Intervenors have not attempted to do so, and thus their *laches* argument fails at the threshold.

In all events, Intervenors' attempt to make even the lesser showing normally required for *laches* is insufficient. They had the obligation to show—through evidence, not mere say-so—that (1) there has been an unreasonable delay in bringing this action which (2) prejudices their rights. *People ex rel. Alvarez v. Gaughan*, 2016 IL 120110, ¶ 14; *Madigan v. Yballe*, 397 Ill. App. 3d 481, 494 (2009). They did not do so.

To start, there has been no delay in bringing this case, and certainly not an unreasonable one. Intervenors notably overlook relevant caselaw advising that plaintiffs wait at least two election cycles before filing a gerrymandering case in order to allow plaintiffs to produce evidence of the discriminatory *effect* of the challenged map. *See* Pls.' Br. at 21–22. Intervenors' focus on when the discriminatory *intent* behind the Enacted Plan was purportedly evident is therefore a red herring. *See* Resp. Br. at 10–11 (quoting statements of Representatives Mazzochi and Spain).

What's more, Intervenors have not provided evidence that anyone's rights have been prejudiced by any supposed delay. Instead, they provide only speculation. *See id.* at 18–21. And even if it is permissible to consider their

speculative arguments of prejudice, Intervenors' arguments are either meritless or premature. *See id.*

For these reasons, Intervenors' *laches* defense must fail.[2]

A. Plaintiffs did not unreasonably delay in filing suit.

Plaintiffs showed (at 15, 20–22) that this case was brought diligently. There were two main reasons why: (1) their claims accrued only two months before the case was filed and (2) relevant caselaw recommends waiting multiple election cycles before filing gerrymandering cases to show the required partisan effect of the map. *Id.* Intervenors, however, overlook both arguments. Resp. Br. at 9–12. Instead, their contention about Plaintiffs' purported delay focuses solely on when Plaintiffs knew (or should have known) about the partisan intent behind the Enacted Plan. *Id.* But this is a red herring: what Plaintiffs might have known about whether the Enacted Plan had a pro-Democratic bias in 2021 says *nothing* about when this case should be brought. A focus on the relevant issues—when the claims accrued and when gerrymandering cases should be brought—yields an inevitable conclusion that Plaintiffs did not delay in filing this case.

[2] Plaintiffs also argued in their opening brief (at 12) that it is premature to decide any questions of timeliness, given that Defendants had not yet appeared, submitted an answer, or filed a motion. Recent events have only made this argument stronger, given Defendants' choice to "take no position on the timeliness of [P]laintiffs' complaint." Defs.' Br. at 2. While Intervenors seek to assert a timeliness defense, they do not acknowledge the procedural irregularity here, nor do they cite any cases in which an intervenor has been allowed to assert the doctrine of *laches* before a defendant has even answered a complaint. In fact, lower court precedent suggests that "*laches* is an affirmative defense, and as such, is simply unavailable to a party that is not a defendant." *Pielet v. Hiffman*, 407 Ill. App. 3d 788, 798 (2011).

1. Plaintiffs filed this case less than two months after their claims accrued.

As Plaintiffs previously argued—and as multiple cases from around the country confirm—their claims accrued in December 2024, when Defendants certified the most recent election results made possible by the gerrymandered Enacted Plan. Pls.' Br. at 14–17. Plaintiffs then filed their complaint "only two months later," which is not a "considerable amount of time" by any calculation, and thus insufficient to trigger *laches*. *City of Chicago v. Alessia*, 348 Ill. App. 3d 218, 229–30 (2004). Intervenors did not as much as acknowledge this argument, thus forfeiting any response (again). ILL. SUP. CT. R. 341(h)(7).

This Court's precedent makes clear that, when a cause of action "involves a continuing or repeated injury, the limitations period does not begin to run until the date of the last injury." *Feltmeier v. Feltmeier,* 207 Ill. 2d 263, 278 (2003). And as a number of relevant cases indicate, the "date of the last injury" for a redistricting claim is the last time "an election occurs." *Blackmoon v. Charles Mix Cnty.*, 386 F. Supp. 2d 1108, 1110 (D.S.D. 2005); *see Thomas v. Bryant,* 366 F. Supp. 3d 786, 802 (S.D. Miss. 2019); *Brown v. Ky. Legis. Rsch. Comm'n*, 966 F. Supp. 2d 709 (E.D. Ky. 2013); *Dotson v. City of Indianola,* 514 F. Supp. 397, 401 (N.D. Miss. 1981). These cases fit hand-in-glove with the general rule that "[w]hen the continued enforcement of a statute inflicts a continuing or repeated harm, a new claim arises … with each new injury." *Flynt v. Shimazu,* 940 F.3d 457, 462 (9th Cir. 2019); *see also* Pls.' Br. at 17 (citing similar authority).

Intervenors, however, have opted to ignore every single one of these cases. Perhaps that is in recognition of the fact that caselaw is firmly on Plaintiffs' side on this issue. In all events, by filing less than two months after their claims accrued, Plaintiffs did not delay in bringing this case. *See Alessia*, 348 Ill. App. 3d at 229–30.

2. Alternatively, Plaintiffs filed this case after two election cycles, in line with US Supreme Court guidance.

Even if Plaintiffs' claims accrued when the Enacted Plan was passed, there was still no delay in bringing this case. As noted in the opening brief (at 21), successful partisan gerrymandering cases require evidence of the discriminatory *effect* of a map, *Rucho v. Common Cause,* 588 U.S. 684, 735 (2019) (Kagan, J., dissenting) (citing cases), and relevant guidance from the US Supreme Court is that "[r]elying on a single election" to show this effect "is unsatisfactory." *Davis v. Bandemer,* 478 U.S. 109, 135 (1986). Put simply, it is in no way "unreasonable" for a Plaintiffs to file this suit after two election cycles. *Gaughan*, 2016 IL 120110, ¶ 14.

Again, Intervenors pretend that this argument does not exist. A search for *Davis v. Bandemer* anywhere in their brief will be in vain. They also do not dispute that courts broadly require a party challenging a gerrymandered map to bring forward sufficient evidence of the map's partisan effects. Nor could they, for such an approach is broadly accepted. *See, e.g.*, *Grisham v. Van Soelen*, 2023-NMSC-027, ¶ 51; *Ohio A. Philip Randolph Inst. v. Householder*, 367 F. Supp. 3d 697, 706 (S.D. Ohio 2019); *League of Women Voters of Mich. v.*

Benson, 373 F. Supp. 3d 867, 912 (E.D. Mich. 2019); *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 864 (M.D.N.C. 2018); *Benisek v. Lamone*, 348 F. Supp. 3d 493, 498 (D. Md. 2018); *League of Women Voters v. Commonwealth*, 178 A.3d 737, 785, 820 (Pa. 2018); *see also* 10B Fed. Proc., L. Ed. § 28:187 ("To prevail on a claim of unconstitutional political gerrymandering … the plaintiff must prove both intentional discrimination against an identifiable political group *and actual discriminatory effect on that group*." (emphasis added)).

Despite this legion of authority that makes clear that Plaintiffs must have evidence of the partisan effect of the Enacted Plan to be successful, Intervenors make a "disingenuous" argument that Plaintiffs' claim "could have, and should have, been raised years ago." Resp. Br. at 10. They make this contention based only on statements that certain Republican Members made on the House floor in 2021 in which they discussed the partisan process behind the Enacted Plan. *Id.* at 10–11. But the most these statements show is that some Republican Members knew about the partisan *intent* behind the Enacted Plan. Nothing in these statements made in 2021 reflect knowledge of the *effects* of the Enacted Plan, which, of course, had to come much later. *See* Compl. ¶¶ 50–54 (describing effects of Enacted Plan). So, contrary to Intervenors' suggestion (at 17), Plaintiffs *did* file this case "as soon as possible."[3]

[3] Rather than responding to what Plaintiffs argued in their opening brief, Intervenors instead opted to discuss irrelevancies like what partisan-bias "score" the Enacted Plan received from an online rating service. Resp. Br. at 11 n.5. This rating—with a methodology unexplained by Intervenors—deserves no credence at this point in the litigation, as Plaintiffs' allegations about the pro-Democratic bias of the Enacted Plan must be taken as true. And, in all events, Intervenors' citing of the purported partisan-bias score is another example of "cherry-picking"—given that the rest of the page reveals that the Enacted Plan got an "F" in

The cases that Intervenors cite that come to a different conclusion do so largely because plaintiffs there filed their case with an impending election. In *Mac Govern v. Connolly*, for example, plaintiffs sought to enjoin the electoral process three weeks before legislative candidates had to file nomination papers and compel the drawing of a new map in less than two months. 637 F. Supp. 111, 112 (D. Mass. 1986). The court, unsurprisingly, rejected the effort, finding that such a remedy would "come at great cost" and pose a "massive disruption to the political process." *Id.* at 116. But *Mac Govern* looks nothing like this case. Plaintiffs filed swiftly after the most recent election cycle in a deliberate effort to *avoid* political disruption.

Rather than acknowledge that Plaintiffs filed this case at the optimal time, Intervenors seek to create a catch-22 and forever immunize their gerrymandered maps from judicial scrutiny. If a plaintiff brings a gerrymandering challenge right after a map is passed, then Intervenors would argue that the claim should fail on the merits because of insufficient evidence of the map's effects. And if a plaintiff waits to collect evidence of the map's effects, Intervenors would argue that the claim should fail procedurally because of *laches*. This, of course, is intolerable. While "heads I win, tails you lose" might be a fine game for a Vegas casino, it has no place in our legal system. *See Schittino v. Vill. of Niles*, 2024 IL App (1st) 230926, ¶ 51 (rejecting

compactness. *See Redistricting Report Card – Illinois 2021 Final State House Map,* GERRYMANDERING PROJ., https://gerrymander.princeton.edu/redistricting-report-card/?planId=reciUSTYXwc3SQ11B.

laches defense that would "forever immunize" a referendum, as it "is an unduly harsh application of the doctrine and not one that we recognize").

* * *

In sum, Plaintiffs did not unreasonably delay in bringing this case.

B. Intervenors have not proved by a preponderance of the evidence that any purported delay prejudices them.

Even if Plaintiffs unreasonably delayed in filing this suit (they did not), Intervenors still must show by a preponderance of the evidence—declarations, affidavits, reports, statistics, and the like—that they would suffer prejudice if this case was allowed to proceed. *Meyers v. Kissner*, 149 Ill. 2d 1, 12 (1992). But the record is barren of any such evidence; all the Court has to go on is Intervenors' say-so. And to the extent speculative prejudice is relevant, Intervenors' arguments are either meritless or premature.

1. Intervenors have introduced no evidence of prejudice.

Whether *laches* applies is "a question of fact." *O'Brien v. Meyer*, 281 Ill. App. 3d 832, 834 (1996) (citing *Gaffney v. Harmon*, 405 Ill. 273 (1950)). It follows that, when a party "present[s] no evidence," it cannot successfully assert *laches*. *Dep't of Healthcare & Family Services ex rel. Hodges v. Delaney*, 2021 IL App (1st) 201186, ¶ 35. Indeed, there is even some precedent that an "evidentiary hearing" is required to determine whether there was any "disadvantage or hardship caused by the delay." *Harper v. City Mut. Ins. Co.*, 67 Ill. App. 3d 694, 699 (1978). In any case, "speculation will not support a *laches* defense." *Madigan v. Yballe*, 397 Ill. App. 3d 481, 494 (2009).

But speculation is all we have here. For example, Intervenors' lead argument (at 13–17) is that, if Plaintiffs win, the map will need be redrawn with "stale" Census data. While this argument is at best premature, *see infra* at 15–17, it is also unmoored to any statistics or data. Generally, census data "is presumed accurate until proven otherwise." *McNeil v. Springfield Park Dist.*, 851 F.2d 937, 946 (7th Cir. 1988). A party who seeks to rebut this presumption must show "clear and convincing" proof of "changed figures." *Id.*; *accord Johnson v. DeSoto Cnty. Bd. of Comm'rs*, 204 F.3d 1335, 1341 (11th Cir. 2000); *In re Stephan*, 775 P.2d 663, 666 (Kan. 1989). This proof, understandably, often entails dueling expert testimony. *See Johnson*, 204 F.3d at 1341.

Intervenors have offered no proof of changed census figures, much less clear and convincing proof. They bring forward no expert testimony on population growth among registered voters or migration patterns. Nor do they explore whether alternative sources of data, including the American Community Survey (ACS), can be used to remedy any purported staleness issues. *See, e.g.*, *In re Interrogatories on Senate Bill 21-247 Submitted by Colo. Gen. Assembly*, 2021 CO 37, ¶ 5 (permitting mapmakers to use "reliable sources of population data, such as . . . interim data from" the ACS); *see also Kirkpatrick v. Preisler*, 394 U.S. 526, 535 (1969) (noting that other data may be considered in determining electoral populations); Resp. Br. at 13 (conceding that the Illinois Constitution does not require the use of decennial census

data). Intervenors' failure of proof dooms any chance they had at showing that any prejudice accompanies Plaintiffs' purported delay. *See Delaney*, 2021 IL App (1st) 201186, ¶ 35.

2. In all events, the purported prejudice Intervenors identify is either meritless or premature.

To the extent that Intervenors' speculative forms of prejudice deserve consideration, they universally do not justify the application of *laches*. Many arguments are meritless, as they conflict with precedent. And, merits aside, most of their claims of prejudice are premature, as they hinge on what remedies this Court declares proper in a later stage of this case.

a. Intervenors have not rebutted the presumption that census data is accurate, nor have they shown why this issue must be settled now.

Intervenors suggest (at 13–17) that Plaintiffs' purported delay means that any new map would now need be drawn with "outdated" census data. This argument is meritless, for Intervenors have not met their high burden of rebutting the presumption that census data is accurate. And, in any case, this fact-intensive issue should not be smuggled in through *laches* briefing, but instead should be evaluated during a remedial phase after this Court has properly declared the Enacted Plan unconstitutional.

As discussed *supra*, census data is "presumed accurate," and Intervenors have not put forward "clear and convincing" proof to overcome that presumption. *McNeil*, 851 F.2d at 946. Their arguments on the alleged staleness of census data are therefore meritless. And if they did actually

attempt to rebut the accuracy of census data, they would have a difficult task. It is not at all uncommon for redistricting cases to lead to maps being redrawn four or more years after the most recent census data. *Bethune-Hill v. Va. State Bd. of Elections*, 368 F. Supp. 3d 872, 874 (E.D. Va. 2019) (eight years); *League of Women Voters v. Commonwealth*, 178 A.3d 737 (Pa. 2018) (seven years); *Shaw v. Hunt*, No. 92-202-CV-5-BR (E.D.N.C. Sept. 12, 1997), ECF No. 262 (six years); *League of United Latin Am. Citizens v. Perry*, 457 F. Supp. 2d 716, 721 (E.D. Tex. 2006) (five years); *Johnson v. Miller*, 922 F. Supp. 1556, 1569 (S.D. Ga. 1995) (four years), *aff'd sub nom. Abrams v. Johnson*, 521 U.S. 74 (1997). For this reason, Intervenors had to do more than note the mere passage of time to show that hearing this case would be prejudicial. But they did not.[4]

Not only do Intervenors' arguments fail on substance, they fail on procedure. It is far too early to consider whether any census data is "stale." If this Court determines that the Enacted Plan is unconstitutional, it will have to formulate an equitable remedy, using its "broad, inherent and discretionary powers." *Daniels v. Anderson*, 162 Ill. 2d 47, 62 (1994) (citation omitted). And not all possible remedies hinge on the availability of accurate population data. For example, this Court has noted that if redistricting poses intractable

[4] The only shred of substantive analysis Intervenors perform is noting that the US Census Bureau announced that Illinois's population had been undercounted by the most recent census. Resp. Br. at 14 & n.9. If this was an attempt to provide "clear and convincing" proof to rebut the presumed accuracy of census results, *McNeil*, 851 F.2d at 946, it is futile. As Intervenors' cited document shows, *every state* was not counted with 100% accuracy by the census. *See* Courtney Hill et al., *Census Estimates for People in the United States by State and Census Operations: 2020 Post-Enumeration Survey Estimation Report* (May 2022) at 16, *available at* https://www2.census.gov/programssurveys/decennial/coverage-measurement/pes/census-coverage-estimates-for-people-inthe-united-states-by-state-and-census-operations.pdf.

difficulties, it retains the option to void the existing map and instead "declare an at-large" election for all House Members. *See People ex rel. Burris v. Ryan*, 147 Ill. 2d 270, 288 (1991). Other courts have noted that a proper remedy could be a declaratory judgment that sets guidelines on future redistricting. *Dickinson v. Ind. State Election Bd.*, 933 F.2d 497, 503 (7th Cir. 1991). Other options necessarily abound. *See Daniels*, 162 Ill. 2d at 62.

For all these reasons, Intervenors' related argument that redistricting here would violate the "one-person, one-vote" principle, *see Reynolds v. Sims*, 377 U.S. 533, 558 (1964), must also fail. Indeed, the main case they cite for their argument forecloses it. *See League of United Latin Am. Citizens v. Perry,* 548 U.S. 399, 420-22 (2006) (*rejecting* "one-person, one-vote" challenge to "mid-decade redistricting" despite "population variances in legislative districts"). Nor do they explain why redrawing the map here poses "one-person, one-vote" problems, but redrawing the maps in the cases cited *supra* at 16—all of which were at least as far removed from the census as this case—did not.

The question of staleness, therefore, is for another day. As Intervenors' cited cases show, this is a knotty issue that is typically resolved after significant judicial proceedings. *See White v. Daniel*, 909 F.2d 99 (4th Cir. 1990) (ruling on staleness of census data after trial). This Court should deny Intervenors' attempt to short-circuit the normal course of litigation.

b. Sitting Senators need not be unseated by invalidating the Enacted Plan.

Intervenors argue (at 18–19) that invalidating the Enacted Plan would "unseat" "group three Senators" who are serving four-year terms that expire in 2028. *See* 10 ILCS 5/29C-10. Again, this contention is meritless and premature.

To start, Intervenors' argument rests on the faulty assumption that the group three Senators must be immediately unseated if this Court orders the redrawing of the Enacted Plan. The caselaw is to the contrary. *See Maryland Comm. for Fair Representation v. Tawes*, 377 U.S. 656, 675 (1964) (invalidating Maryland's legislative apportionment plan but permitting all incumbent legislators to complete their four-year terms of office); *see also, e.g.*, *Twilley v. Stabler*, 290 A.2d 636, 638 (Del. 1972) (holding that there is no requirement for "a State to cast a validly elected official out of office prior to the expiration of his term, in order to give the residents of the revised district the opportunity to elect someone else immediately after a reapportionment."); 16B C.J.S. CONSTITUTIONAL LAW § 1432 & nn.9–11 (explaining this principle). Given this well-established body of law, Plaintiffs have no intention of "nullif[ying] the people's choice by eliminating the right of the elected official to serve." *Tully v. Edgar,* 171 Ill. 2d 297, 308 (1996).

So the only possible issue would be if any group three Senators were "drawn out" of their district by a new map, as that might pose a problem given the Illinois Constitution's residency requirement. *See* ILL. CONST. art. IV, § 2(c). For some reason, Intervenors suggest (at 19 n.11) that this is an

intractable issue. But this does not have to be so. For one thing, the Illinois Constitution, by its own terms, provides some relief from residency requirements immediately following redistricting. *See id.* Moreover, as Intervenors know well, mapmakers use sophisticated software that can "generate thousands of possibilities at the touch of a key," managing many inputs with "unprecedented efficiency and precision." *Rucho*, 588 U.S. at 729 (Kagan, J., dissenting). There's no reason why a mapmaker could not add one more input: that no group three Senators be unseated. This simple solution resolves the issue.

But, again, these are details that can be hashed out through a robust remedial phase of this litigation, after this Court has had a chance to rule on the merits. Intervenors' argument that this case would prejudice the group three Senators and the individuals who voted for them is entitled to no weight.

c. Intervenors' argument that redistricting would result in prejudice to representatives and voters is meritless.

Intervenors make a cursory argument (at 19–20) that redrawing the Enacted Plan would "[f]orce some members to move or run in new districts," meaning that voters would lose representatives that they have "come to know." But this contention has been soundly rejected before, and should be rejected here, too. *Knox v. Milwaukee Cnty. Bd. of Election Comm'rs*, 607 F. Supp. 1112, 1118 (E.D. Wis. 1985) ("The companion specters of constituent confusion as to the identity of their elected representatives and [elected official] uncertainty as to the future of their political careers … plainly do not rise to the level of

undue prejudice sufficient to establish laches."). And the only case that Intervenors cite for their argument—*Fouts v. Harris*—is easily distinguishable, given that the lawsuit there would have resulted in two redistrictings in two years. 88 F. Supp. 2d 1351, 1354 (S.D. Fla. 1999).

Finally, Intervenors' contention hinges on a presently unknowable fact: how many members would need to move or run in new districts. Their attempt to speculate their way into asserting *laches* is legally impermissible. *Madigan*, 397 Ill. App. 3d at 494.

d. Intervenors' attempt to immunize electoral maps from challenge should be rejected.

Intervenors (at 17, 20–21) contend that this Court should dismiss this case, lest it send the message that the courthouses are open to hear "challenges to other electoral maps." In this argument, Intervenors give the game away. They seek a regime in which electoral maps—no matter how gerrymandered, how corruptly made, or how unconstitutional—are immune from challenge. This argument finds no basis in the Illinois Constitution (which allows maps to be challenged in court, *see* art. IV, § 3(b)) or in the law generally, *see Schittino*, 2024 IL App (1st) 230926, ¶ 43 ("[I]f an enacted law violates the[] rights [of a citizen], they should typically be permitted access to the courts to make their case."); *Forbes v. Hubbard*, 348 Ill. 166, 176 (1932) ("[M]ere acquiescence, regardless of the period thereof, cannot legalize a clear usurpation of power which offends against the Constitution adopted by the

people."). In sum, a ruling that allows flagrantly unconstitutional maps to be challenged in court is an unalloyed good, not a form of "prejudice."

* * *

For these reasons, all the purported forms of prejudice that Intervenors have identified are either meritless or premature. But one more thing needs to be said. It is striking that Intervenors—two of the most prominent elected officials in Illinois—did not once mention the prejudice that would befall the citizens of the state if they remain subject to a rigged electoral map.

But this countervailing prejudice needs to be acknowledged. After all, *laches* is an equitable doctrine; whether it applies hinges on "the facts and circumstances of each case." *Gaughan*, 2016 IL 120110, ¶ 14. And here, the facts and circumstances show that allowing extreme partisan gerrymandering to continue unchecked in Illinois would be significantly prejudicial. A world in which the party in power can "rig[] elections," *Rucho*, 588 U.S. at 727 (Kagan, J., dissenting), by ensuring the minority party can never prevail, *see* Compl. ¶¶ 53–54, is not a world most Illinois voters want to live in—regardless of political party. *See, e.g.*, *Illinois Democratic governor candidates speak at the Chicago Sun-Times* (Jan. 22, 2018) (statement of J.B. Pritzker) ("We want more competitive elections …. Right now, people feel like they walk into the voting booth and because of the way that their district has been gerrymandered, they really only have one choice.").[5]

[5] *Available at* https://chicago.suntimes.com/2018/1/22/18394876/video-illinois-democratic-governor-candidates-speak-at-the-chicago-sun-times.

So a balancing of the equities here reveals an obvious truth. It is far more prejudicial to Illinois voters to immunize an admittedly gerrymandered map from judicial scrutiny than it is to allow this case to proceed. *Laches*, therefore, does not apply here.

CONCLUSION

For the reasons stated, this Court should find that the Motion was timely filed. This Court should also grant the Motion, allowing leave to file the Complaint, and set a briefing schedule.

Dated: March 21, 2025

Respectfully submitted,

/s/ *Charles E. Harris, II*
CHARLES E. HARRIS, II (6280169)
MITCHELL D. HOLZRICHTER (6296755)
HEATHER A. WEINER (6317169)
JOSEPH D. BLACKHURST (6335588)
PRESTON R. MICHELSON (6342297)
MAYER BROWN LLP
71 South Wacker Dr.
Chicago, IL 60606
(312) 782-0600 (telephone)
(312) 706-9364 (facsimile)
charris@mayerbrown.com
mholzrichter@mayerbrown.com
hweiner@mayerbrown.com
jblackhurst@mayerbrown.com
pmichelson@mayerbrown.com

/s/ *John G. Fogarty*
JOHN G. FOGARTY JR. (6257898)
THE LAW OFFICE OF JOHN FOGARTY JR.
4043 North Ravenswood Ave.
Suite 226
Chicago, IL 60613
(773) 549-2647 (telephone)
johnf@fogartylawoffice.com

Counsel for Plaintiffs

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and those matters appended to the brief under Rule 342(a) is 5,788 words.

/s/ Charles E. Harris, II
Charles E. Harris, II
Mayer Brown LLP

No. 131480

IN THE SUPREME COURT OF ILLINOIS

TONY MCCOMBIE, in her official capacity as Minority Leader of the Illinois House of Representatives and individually as a registered voter; ROBERT BERNAS, individually as a registered voter; THOMAS J. BROWN, individually as a registered voter; and SERGIO CASILLAS VAZQUEZ, individually as a registered voter; JOHN COUNTRYMAN, individually as a registered voter; and ASHLEY HUNSAKER, individually as a registered voter, Plaintiffs, v. ILLINOIS STATE BOARD OF ELECTIONS and JENNIFER M. BALLARD CROFT, CRISTINA D. CRAY, LAURA K. DONAHUE, TONYA L. GENOVESE, CATHERINE S. MCCRORY, RICK S. TERVEN, SR., CASANDRA B. WATSON, and JACK VRETT, all named in their official capacities as members of the State Board of Elections, Defendants.	Original Action under Article IV, Section 3 of the Illinois Constitution

TO: Frank H. Bieszczat
Assistant Attorney General
115 S. LaSalle St.
Chicago, IL 60603
(312) 814-2090
CivilAppeals@ilag.gov

Counsel for the Illinois State Board of Elections and its Members

Devon C. Bruce
Power Rogers, LLP
70 W. Madison St., Suite 5500
Chicago, IL 60606
(312) 236-9381
dbruce@powerrogers.com

Counsel for President Harmon

Michael J. Kasper
151 N. Franklin St. #2500
Chicago, IL 60606
(312) 704-3292
Mjkasper60@mac.com

Adam R. Vaught
Croke Fairchild Duarte & Beres
191 N. Wacker Dr. 31st Floor
Chicago, IL 606096
(217) 720-1961
avaught@crokefairchild.com

Counsel for Speaker Welch

NOTICE OF FILING OF BRIEF OF PLAINTIFFS REGARDING TIMELINESS OF MOTION FOR LEAVE TO FILE COMPLAINT

PLEASE TAKE NOTICE that on March 21, 2025, the undersigned electronically filed the Reply Brief of Plaintiffs in Support of Motion for Leave to File Complaint in the above-captioned case with the Clerk of the Supreme Court of Illinois using Odyssey eFileIL. A copy is hereby served upon you.

Dated: March 21, 2025

Respectfully submitted,

/s/ *Charles E. Harris, II*
CHARLES E. HARRIS, II (6280169)
MITCHELL D. HOLZRICHTER (6296755)
HEATHER A. WEINER (6317169)
JOSEPH D. BLACKHURST (6335588)
PRESTON R. MICHELSON (6342297)
MAYER BROWN LLP
71 South Wacker Dr.
Chicago, IL 60606
(312) 782-0600 (telephone)
(312) 706-9364 (facsimile)
charris@mayerbrown.com
mholzrichter@mayerbrown.com
hweiner@mayerbrown.com
jblackhurst@mayerbrown.com
pmichelson@mayerbrown.com

/s/ *John G. Fogarty*
JOHN G. FOGARTY JR. (6257898)
THE LAW OFFICE OF JOHN FOGARTY JR.
4043 North Ravenswood Ave.
Suite 226
Chicago, IL 60613
(773) 549-2647 (telephone)
johnf@fogartylawoffice.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, Charles E. Harris, II, an attorney, hereby certify that on March 21, 2025, I caused a Notice of Filing and the Reply Brief of Plaintiffs Regarding Timeliness of Motion for Leave to File Complaint to be electronically filed with the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system. I further certify that I will cause one copy of the above-named filings to be served upon counsel listed below via electronic mail on March 21, 2025.

Frank H. Bieszczat
Assistant Attorney General
115 S. LaSalle St.
Chicago, IL 60603
(312) 814-2090
CivilAppeals@ilag.gov

Counsel for the Illinois State Board of Elections and its Members

Devon C. Bruce
Power Rogers, LLP
70 W. Madison St., Suite 5500
Chicago, IL 60606
(312) 236-9381
dbruce@powerrogers.com

Counsel for President Harmon

Michael J. Kasper
151 N. Franklin St. #2500
Chicago, IL 60606
(312) 704-3292
Mjkasper60@mac.com

Adam R. Vaught
Croke Fairchild Duarte & Beres
191 N. Wacker Dr. 31st Floor
Chicago, IL 606096
(217) 720-1961
avaught@crokefairchild.com

Counsel for Speaker Welch

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Charles E. Harris, II
Charles E. Harris, II
Mayer Brown LLP
71 South Wacker Dr.
Chicago, IL 60606
(312) 701-8934
charris@mayerbrown.com

Counsel for Plaintiffs